

Our Ref.: 500.003US1  
Serial No.: Not Assigned  
Filing Date: Not Filed

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MARK A. LITMAN & ASSOCIATES, P.A.

# United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY



As a below named inventor WE hereby declare that: our residence, post office address and citizenship are as stated below next to our names; that

We verily believe We are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled: **IMAGING METHODS FOR VISUALIZING IMPLANTED LIVING CELLS**  
The specification of which is attached hereto.

We hereby state that We have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

We acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

We hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

**No such applications have been filed.**

We hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

**No such applications have been filed.**

We hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

**No such applications have been filed.**

We hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Litman, Mark A.

Reg. No. 26,390

We hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which We hereby declare that We have consented after full disclosure to be represented unless/until We instruct Mark A. Litman to the contrary.

Please direct all correspondence in this case to Mark A. Litman & Associates, P.A. at the address indicated below:

3209 West 76th St.  
York Business Center, Suite 205

Our Ref.: 500.003US1  
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Edina, MN 55435  
Telephone No. (952)832.9090

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Full Name of joint inventor number 1: Michael E. Moseley  
Citizenship: U.S.A. Residence: 253 Sylvan Way,  
Redwood City, California 94062;,  
Post Office Address: 253 Sylvan Way  
Redwood City, California 94062

Signature:

A handwritten signature in cursive script, appearing to read "Michael E. Moseley", written over a horizontal line.

Date:

8/8/00

Full Name of joint inventor number 2: John Kucharczyk  
Citizenship: U.S.A.

Residence: 261 Wilson Avenue,  
Novato, California 94947

Post Office Address: : 261 Wilson Avenue,  
Novato, California 94947

Signature:

A handwritten signature in cursive script, appearing to read "John Kucharczyk", written over a horizontal line.

Date:

7/27/00

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

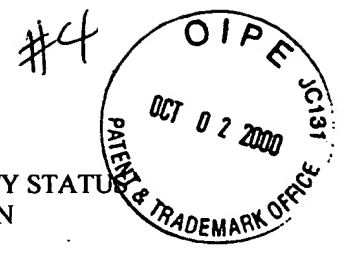
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



**NONPROFIT ORGANIZATION**  
**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS**  
**(37 C.F.R. 1.9(e) AND 1.27(d)) - NONPROFIT ORGANIZATION**

I hereby declare that I am an official empowered to act on behalf of the nonprofit organization identified below:

NAME OF 1<sup>st</sup> ORGANIZATION: The Regents of the University of Minnesota  
ADDRESS OF 1<sup>st</sup> ORGANIZATION: University of Minnesota, University Gateway, 200 Oak Street  
SE, Minneapolis, Minnesota 55455-2020

NAME OF 2<sup>nd</sup> ORGANIZATION: The Board of Trustees of the Leland Stanford Junior University  
ADDRESS OF 2<sup>nd</sup> ORGANIZATION: Office of Technology Licensing, 900 Welch Road, Suite 350,  
Palo Alto, California 94304

**TYPE OF ORGANIZATIONS:**

- a) ☒ UNIVERSITY OR OTHER INSTITUTION OF HIGHER EDUCATION
- b) ☐ TAX EXEMPT UNDER INTERNAL REVENUE SERVICE CODE (26 U.S.C. 501(a) AND 501(c)(3))
- c) ☐ NONPROFIT SCIENTIFIC OR EDUCATIONAL UNDER STATUTE OF STATE OF THE UNITED STATES OF AMERICA – (NAME OF STATE \_\_\_\_\_)  
(CITATION OF STATUTE \_\_\_\_\_)
- d) ☐ WOULD QUALIFY AS TAX EXEMPT UNDER INTERNAL REVENUE SERVICE CODE (26 U.S.C. 501(a) AND 501(c)(3)) IF LOCATED IN THE UNITED STATES OF AMERICA
- e) ☐ WOULD QUALIFY AS NONPROFIT SCIENTIFIC OR EDUCATIONAL UNDER STATUTE OF STATE OF THE UNITED STATES OF AMERICA IF LOCATED IN THE UNITED STATES OF AMERICA – (NAME OF STATE \_\_\_\_\_)  
(CITATION OF STATUTE \_\_\_\_\_)

I hereby declare that the nonprofit organization identified above qualifies as a nonprofit organization as defined in 13 C.F.R. 1.9(e) for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in regard to the invention, entitled **IMAGING METHODS FOR VISUALIZING IMPLANTED LIVING CELLS** by inventors Michael E. Moseley, and John Kucharczyk, described in application serial no. **09/606,137**, bearing the attorney's docket number: **500.003US1**.

I hereby declare that rights under contract or law have been conveyed to and remain with the nonprofit organization with regard to the above identified invention.

If the rights held by the nonprofit organization are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37 C.F.R. 1.9(c) or by any concern which would not qualify as a small business concern under 37 C.F.R. 1.9(d) or a nonprofit organization under 37 C.F.R. 1.9(e). \*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 C.F.R. 1.27)

**1<sup>st</sup> Joint Organization:**

NAME: The Regents of the University of Minnesota  
ADDRESS: University of Minnesota, University Gateway, 200 Oak Street SE, Minneapolis, Minnesota 55455-

a) ☐ INDIVIDUAL      b) ☐ SMALL BUSINESS CONCERN      c) ☒ NONPROFIT ORGANIZATION

**2<sup>nd</sup> Joint Organization:**

NAME: The Board of Trustees of the Leland Stanford Junior University  
ADDRESS: Office of Technology Licensing, 900 Welch Road, Suite 350, Palo Alto, California 94304

a) ☐ INDIVIDUAL      b) ☐ SMALL BUSINESS CONCERN      c) ☒ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereof, or any patent to which this verified statement is directed.

1<sup>st</sup> Organization Authorization:

NAME : Michael F. Moore

TITLE: Director, Health Technologies  
University of Minnesota

ADDRESS: Patents & Technology Marketing, 200 Oak Street SE, Suite 450  
Minneapolis, MN 55455-2070

SIGNATURE:  DATE: 8/22/00

2nd Organization Authorization:

NAME : \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereof, or any patent to which this verified statement is directed.

2<sup>nd</sup> Organization Authorization:

NAME : Jon Sandelin

TITLE: Senior Associate

ADDRESS: 900 Welch Road, Suite 350 Palo Alto, CA 94304

SIGNATURE: 

DATE: Aug 17, 2000

Organization Authorization:

NAME : \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



Date: \_\_\_\_\_

Date: \_\_\_\_\_

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(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.